

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1189 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 6-2.5-11-2 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this
- 5 chapter:
- 6 (1) "Agreement" means the Streamlined Sales and Use Tax
- 7 Agreement.
- 8 (2) "Certified automated system" means software certified jointly
- 9 by the states that are signatories to the agreement to calculate the
- 10 tax imposed by each jurisdiction on a transaction, to determine
- 11 the amount of tax to remit to the appropriate state, and to maintain
- 12 a record of the transaction.
- 13 (3) "Certified service provider" means an agent certified jointly by
- 14 the states that are signatories to the agreement to perform all of
- 15 the seller's sales tax functions.
- 16 (4) "Person" means an individual, a trust, an estate, a fiduciary, a
- 17 partnership, a limited liability company, a limited liability
- 18 partnership, a corporation, or any other legal entity.
- 19 (5) "Sales tax" means:
- 20 (A) the state gross retail tax levied under IC 6-2.5; and
- 21 (B) the local option gross retail tax levied under IC 6-3.5-9.
- 22 (6) "Seller" means any person making sales, leases, or rentals of
- 23 personal property or services.
- 24 (7) "State" means any state of the United States and the District

1 of Columbia.

2 (8) "Use tax" means the use tax levied under IC 6-2.5.

3 SECTION 2. IC 6-2.5-11-13 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2008]: **Sec. 13. (a) As used in this section, "taxing jurisdiction"**  
6 **means the geographical territory of the state or a political**  
7 **subdivision in which a sales or use tax is in effect.**

8 **(b) As used in this section, "local taxing jurisdiction" means the**  
9 **taxing jurisdiction of a political subdivision.**

10 **(c) The department shall maintain a data base that describes**  
11 **boundary changes for all local taxing jurisdictions. The data base**  
12 **must include a description of each change and the effective date of**  
13 **the change.**

14 **(d) The department shall maintain a data base of all sales and**  
15 **use tax rates for each jurisdiction in Indiana that levies sales or use**  
16 **tax. The state and each political subdivision in the data base must**  
17 **be identified by codes that conform with Federal Information**  
18 **Processing Standards, as developed by the National Institute of**  
19 **Standards and Technology.**

20 **(e) The department shall maintain a data base that assigns to**  
21 **each five (5) digit and nine (9) digit ZIP code in Indiana the taxing**  
22 **jurisdictions within the ZIP code that levy a sales or use tax in the**  
23 **taxing jurisdiction.**

24 **(f) The department shall maintain the data bases described in**  
25 **subsections (c) through (e) in accordance with the requirements of**  
26 **the agreement.**

27 **(g) The department shall allow sellers and certified service**  
28 **providers access to the data bases described in subsections (c)**  
29 **through (e).**

30 **(h) The department may contract with a vendor to maintain the**  
31 **data bases that the department is required to maintain under this**  
32 **section.**

33 SECTION 3. IC 6-2.5-11-14 IS ADDED TO THE INDIANA CODE  
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
35 1, 2008]: **Sec. 14. (a) Except as provided in subsection (b), a seller**  
36 **or certified service provider is not liable for the tax, penalties, and**  
37 **interest associated with charging and collecting the incorrect**  
38 **amount of sales or use tax for a retail transaction if:**

39 **(1) the seller or certified service provider has relied on**  
40 **erroneous data provided by the department in the data base**  
41 **described in section 13(e) of this chapter; and**

42 **(2) the erroneous data provided by the department in the data**  
43 **base described in section 13(e) of this chapter is the reason**  
44 **that the seller or certified service provider charged and**  
45 **collected the incorrect amount of sales or use tax on the retail**  
46 **transaction.**

47 **(b) If the department:**

(1) corrects the errors in the data base described in section 13(e) of this chapter; and

(2) provides the seller or certified service provider with notice of the corrected data;

the relief provided by subsection (a) ceases ten (10) days after the seller or certified service provider receives the department's notice of corrected data.

SECTION 4. IC 6-3.5-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

#### **Chapter 9. Local Option Gross Retail Tax**

**Sec. 1.** Except as otherwise provided in this chapter, the definitions contained in:

(1) IC 6-2.5-1; and

(2) IC 36-1-2;

apply throughout this chapter.

**Sec. 2.** As used in this chapter, "adopting municipality" means an eligible municipality that has adopted the local option gross retail tax.

**Sec. 3.** As used in this chapter, "eligible municipality" means a municipality that is certified as an Indiana tourist destination by the office of tourism development under section 16 of this chapter.

**Sec. 4.** As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5, except that the term does not include taxes imposed under IC 6-2.5 or IC 6-9.

**Sec. 5.** As used in this chapter, "local option gross retail tax district" of an adopting municipality means the geographic territory in which the local option gross retail tax adopted by the adopting municipality is imposed.

**Sec. 6. (a)** Subject to subsection (b), the fiscal body of an eligible municipality, using procedures described in this chapter, may adopt an ordinance to impose or rescind the local option gross retail tax in the local option gross retail tax district of the eligible municipality.

**(b)** An eligible municipality that imposes a food and beverage tax under IC 6-9-27 may not also impose the local option gross retail tax under this chapter.

**(c)** Before the fiscal body of an eligible municipality may adopt an ordinance to impose or rescind a tax under this chapter, the fiscal body of the eligible municipality must hold a public hearing on the proposed ordinance. The fiscal body of the eligible municipality must provide notice to the public in accordance with IC 5-3-1 of the date, time, and place of the public hearing.

**(d)** An ordinance imposing the local option gross retail tax under this chapter must specify the date the local option gross retail tax takes effect. A tax imposed under this chapter must take effect on the first day of a calendar quarter. A tax imposed under

1 this chapter may not take effect until at least sixty (60) days after  
2 the date the ordinance imposing the tax is adopted.

3 (e) An ordinance imposing the local option gross retail tax under  
4 this chapter must specify the boundaries of the eligible  
5 municipality on the effective date of the local option gross retail  
6 tax. The boundaries of the eligible municipality on the effective  
7 date of the local option gross retail tax are the initial boundaries of  
8 the local option gross retail tax district of the eligible municipality.

9 (f) An ordinance imposing the local option gross retail tax under  
10 this chapter must specify the rate at which the local option gross  
11 retail tax is imposed. The rate may not exceed five-tenths percent  
12 (0.5%) of the gross retail income received by a retail merchant in  
13 a retail unitary transaction.

14 Sec. 7. (a) If at any time the boundaries of an adopting  
15 municipality do not coincide with the boundaries of the local option  
16 gross retail tax district of the adopting municipality, the fiscal body  
17 of an adopting municipality may adopt an ordinance to alter the  
18 boundaries of the local option gross retail tax district to coincide  
19 with the boundaries of the adopting municipality.

20 (b) An ordinance adopted under subsection (a) must specify the  
21 date on which the altered boundaries of the local option gross retail  
22 tax district take effect. The altered boundaries of the local option  
23 gross retail tax district must take effect on the first day of a  
24 calendar quarter. The altered boundaries of the local option gross  
25 retail tax district may not take effect until at least sixty (60) days  
26 after the date on which the ordinance is adopted.

27 (c) An ordinance adopted under subsection (a) must specify the  
28 changes to the boundaries of the local option gross retail tax  
29 district of the adopting county.

30 Sec. 8. The fiscal body of an adopting municipality may adopt  
31 an ordinance to rescind the tax. The fiscal body of the adopting  
32 municipality must specify in the ordinance the date the rescission  
33 of the tax takes effect.

34 Sec. 9. (a) If the fiscal body of an eligible municipality adopts an  
35 ordinance under this chapter, the fiscal body of the eligible  
36 municipality shall immediately send a certified copy of the  
37 ordinance to the department.

38 (b) If:

39 (1) the fiscal body of an eligible municipality adopts an  
40 ordinance to impose the local option gross retail tax under  
41 section 6 of this chapter; or

42 (2) the fiscal body of an adopting municipality adopts an  
43 ordinance to change the boundaries of the adopting  
44 municipality's local option gross retail tax district under  
45 section 7 of this chapter;

46 the fiscal body shall immediately transmit information concerning  
47 the boundaries of the local option gross retail tax district to the

department in an electronic format prescribed by the department.

**Sec. 10. (a)** A tax imposed under this chapter by the fiscal body of an adopting municipality applies only to a retail transaction that:

(1) is subject to the state gross retail tax; and

(2) is sourced to the local option gross retail tax district of the adopting municipality under the sourcing rules of IC 6-2.5.

**(b)** Subsection (a) applies to a local option gross retail tax throughout the period of time an ordinance imposing the local option gross retail tax is in effect. An amendment of the state gross retail tax applies also to the local option gross retail tax in effect in an adopting municipality on the date the amendment to the state gross retail tax becomes effective.

**Sec. 11. (a)** The local option gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at the rate specified in an ordinance adopted under section 6 of this chapter.

**(b)** A retail merchant may apply the rounding rule of IC 6-2.5-2-2(b) to the unrounded total of:

(1) the state gross retail tax; plus

(2) the local option gross retail tax;

that is imposed on a retail transaction.

**Sec. 12. (a)** A person who receives goods or services in a retail transaction that is taxed under this chapter is liable for the tax. The person shall pay the tax to the retail merchant as a separate amount added to the consideration for the goods or services. The retail merchant shall collect the tax as an agent for the state and the county. The tax imposed under this chapter shall be imposed, paid, and collected in the same manner in which the state gross retail tax is imposed, paid, and collected under IC 6-2.5.

**(b)** An eligible municipality that imposes the local option gross retail tax under this chapter is prohibited from conducting an audit of any retail merchant or purchaser for the purpose of determining whether the proper amount of local option gross retail tax has been collected or paid.

**Sec. 13. (a)** A special account within the state general fund shall be established for each adopting municipality that imposes the local option gross retail tax. Revenue collected under this chapter within an adopting municipality shall be deposited in that adopting municipality's account in the state general fund.

**(b)** Income earned on money held in an account under subsection (a) becomes a part of that account.

**(c)** Revenue remaining in an account established under subsection (a) at the end of a fiscal year does not revert to the state general fund.

**Sec. 14. (a)** Revenue derived from the imposition of the local option gross retail tax shall, in the manner prescribed by this

1 section, be distributed to the adopting municipality that imposed  
2 it.

3 (b) After the last day of each month, the auditor of state shall  
4 distribute the amount specified in subsection (c) to the fiscal officer  
5 of each adopting municipality.

6 (c) The amount to be distributed each month to an adopting  
7 municipality under this section is the amount accumulated at the  
8 end of the month in the adopting municipality's special account  
9 established under section 13 of this chapter.

10 (d) The auditor of state may adjust the amount specified in  
11 subsection (c) to account for mathematical or clerical errors  
12 involving a previous distribution under this section. At the  
13 discretion of the auditor of state, an adjustment under this section  
14 may be prorated over two (2) or more future distributions under  
15 this section.

16 Sec. 15. An adopting municipality may use local option gross  
17 retail tax revenue received in a distribution under section 14 of this  
18 chapter for any lawful purpose.

19 Sec. 16. A municipality may submit an application to the office  
20 of tourism development for certification as an Indiana tourist  
21 destination. The application must be made on forms and in the  
22 manner prescribed by the office of tourism development.

23 Sec. 17. (a) The office of tourism development shall establish a  
24 program for certifying municipalities as tourist destinations.

25 (b) The office of tourism development shall certify a  
26 municipality as an Indiana tourist destination under this chapter  
27 if the number of people from outside Indiana that annually visit the  
28 municipality exceeds:

- 29 (1) five hundred percent (500%); multiplied by
- 30 (2) the population of the municipality, as determined by the
- 31 most recent of the following:
  - 32 (A) Federal decennial census (as defined in IC 1-1-3.5-2).
  - 33 (B) Federal special census.
  - 34 (C) Special tabulation (as defined in IC 1-1-3.5-2.5).
  - 35 (D) Corrected population count (as defined in
  - 36 IC 1-1-3.5-1.5).

37 (c) The office of tourism development shall send a determination  
38 letter to the executive of each municipality that submits an  
39 application for certification as an Indiana tourist destination. The  
40 determination letter must describe the data that the office of  
41 tourism development relied on in making the determination.

42 Sec. 18. (a) Notwithstanding IC 6-9, a county food and beverage  
43 tax under IC 6-9 or a county innkeeper's tax under IC 6-9 does not  
44 apply within the boundaries of an adopting municipality.

45 (b) If a county food and beverage tax under IC 6-9 or a county  
46 innkeeper's tax under IC 6-9 specifies a distribution of county food  
47 and beverage tax revenue or county innkeeper's tax revenue to an

adopting municipality, the adopting municipality shall be treated in a distribution formula as if the adopting municipality does not exist.

(c) If a county food and beverage tax under IC 6-9 or a county innkeeper's tax under IC 6-9 specifies an appointment of a member to any board concerned with a food and beverage tax or a county innkeeper's tax by an adopting municipality or to represent an adopting municipality, the adopting municipality shall be treated in the appointment or board composition formula as if the adopting municipality does not exist.

SECTION 5. IC 6-8.1-1-1, AS AMENDED BY P.L.233-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); the gross income tax (IC 6-2.1) (repealed); the utility receipts and utility services use taxes (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the municipal option income tax (IC 6-3.5-8); **a local option gross retail tax (IC 6-3.5-9)**; the auto rental excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.

SECTION 6. IC 6-8.1-3-7.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7.1. (a) "Fiscal officer" has the meaning set forth in IC 36-1-2-7.

(b) The department shall enter into an agreement with the fiscal

officer of an entity that has adopted a **local option gross retail tax under IC 6-3.5-9**, an innkeeper's tax, a food and beverage tax, or an admissions tax under IC 6-9 to furnish the fiscal officer annually with:

- (1) the name of each business collecting the taxes listed in this subsection; and
- (2) the amount of money collected from each business.

(c) The agreement must provide that the department must provide the information in an electronic format that the fiscal officer can use, as well as a paper copy.

(d) The agreement must include a provision that, unless in accordance with a judicial order, the fiscal officer, employees of the fiscal officer, former employees of the fiscal officer, counsel of the fiscal officer, agents of the fiscal officer, or any other person may not divulge the names of the businesses, the amount of taxes paid by the businesses, or any other information disclosed to the fiscal officer by the department.

SECTION 7. IC 6-8.1-7-1, AS AMENDED BY P.L.219-2007, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and
- (2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public



welfare may be revealed to the director of the division of family resources, and to any director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(j) may be released solely for tax collection purposes to township assessors and county assessors.

(h) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(i) All information relating to the delinquency or evasion of the motor vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and

1 collection of the taxes imposed by IC 6-6-5.

2 (j) All information relating to the delinquency or evasion of  
3 commercial vehicle excise taxes payable to the bureau of motor  
4 vehicles in Indiana may be disclosed to the bureau and may be  
5 disclosed to another state, if the information is disclosed for the  
6 purpose of the enforcement and collection of the taxes imposed by  
7 IC 6-6-5.5.

8 (k) All information relating to the delinquency or evasion of  
9 commercial vehicle excise taxes payable under the International  
10 Registration Plan may be disclosed to another state, if the information  
11 is disclosed for the purpose of the enforcement and collection of the  
12 taxes imposed by IC 6-6-5.5.

13 (l) This section does not apply to:

- 14 (1) the beer excise tax (IC 7.1-4-2);
- 15 (2) the liquor excise tax (IC 7.1-4-3);
- 16 (3) the wine excise tax (IC 7.1-4-4);
- 17 (4) the hard cider excise tax (IC 7.1-4-4.5);
- 18 (5) the malt excise tax (IC 7.1-4-5);
- 19 (6) the motor vehicle excise tax (IC 6-6-5);
- 20 (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- 21 (8) the fees under IC 13-23.

22 (m) The name and business address of retail merchants within each  
23 county that sell tobacco products may be released to the division of  
24 mental health and addiction and the alcohol and tobacco commission  
25 solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

26 **(n) The department shall notify the appropriate county**  
27 **treasurer that a taxpayer is delinquent in remitting local option**  
28 **gross retail taxes collected under IC 6-3.5-9."**

29 Page 1, line 15, after "transaction" insert ":".

30 Page 1, line 16, strike "in which:".

31 Page 1, line 17, after "(1)" insert "**in which**".

32 Page 2, line 3, strike "or".

33 Page 2, line 4, after "(2)" insert "**in which**".

34 Page 2, line 5, delete "." and insert "; **or**

35 **(3) that occurs within the boundaries of a municipality if:**

36 **(A) the county in which the municipality is located has**  
37 **imposed the tax under this chapter; and**

1                   **(B) the municipality has imposed the local option gross**  
2                   **retail tax under IC 6-3.5-9."**

3                   Renumber all SECTIONS consecutively.  
                    (Reference is to HB 1189 as printed January 25, 2008.)

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Representative Stutzman